

1 SB383
2 107529-1
3 By Senators Little (Z), Benefield, Ross, Butler, Beason,
4 Waggoner, Penn, Marsh, Holley, Little (T), Mitchell, Means,
5 Singleton, Pittman, and Barron
6 RFD: Judiciary
7 First Read: 17-FEB-09

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8 SYNOPSIS: Under existing law, certain criteria for
9 determining the manner, method, or amount of
10 restitution to be ordered may be considered by the
11 court.

12 This bill would provide restitution of no
13 less than \$50,000 for capital offenses and \$10,000
14 for rape in the first degree; would provide that
15 the fact restitution was made cannot be introduced
16 in any civil action for damages; and would provide
17 credit of any restitution paid in any civil
18 judgment for the victim.

19 Under existing law, restitution is
20 enforceable during the period of imprisonment when
21 the defendant has income.

22 This bill would include any asset or other
23 income or portion thereof of the defendant.

24 Under existing law, only the victim,
25 district attorney, or the court may move to require
26 any asset or other income or any portion thereof of
27 the defendant be withheld or attached.

1 This bill would include the Attorney General
2 and would direct for outgoing mail to be inspected
3 for any items or objects with monetary value for
4 purposes of collecting restitution.

5
6 A BILL
7 TO BE ENTITLED
8 AN ACT

9
10 Relating to restitution; to amend Sections 15-18-68,
11 15-18-71, and 15-18-144, Code of Alabama 1975, to further
12 provide for the collection of restitution.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. Sections 15-18-68, 15-18-71, and
15 15-18-144 of the Code of Alabama 1975, are amended to read as
16 follows:

17 "§15-18-68.

18 "(a) In determining the manner, method, or amount of
19 restitution to be ordered, the court may take into
20 consideration all of the following:

21 "(1) The financial resources of the defendant and
22 the victim and the burden that the manner or method of
23 restitution will impose upon the victim or the defendant.

24 "(2) The ability of the defendant to pay restitution
25 on an installment basis or on other conditions to be fixed by
26 the court.

1 "(3) The anticipated rehabilitative effect on the
2 defendant regarding the manner of restitution or the method of
3 payment~~7~~.

4 "(4) Any burden or hardship upon the victim as a
5 direct or indirect result of the defendant's criminal acts~~7~~.

6 "(5) The mental, physical, and financial well being
7 of the victim.

8 "(b) When a defendant has been convicted of the
9 following offenses after February 1, 2009, the court may
10 consider the factors enumerated in subsection (a) and shall
11 order restitution to be paid as follows:

12 "(1) When a defendant has been convicted of a
13 capital offense under subsection (a) of Section 13A-5-40, the
14 court shall order restitution for an amount not less than
15 fifty thousand dollars (\$50,000) for each conviction under
16 subsection (a) of Section 13A-5-40.

17 "(2) When a defendant has been convicted of rape in
18 the first degree under Section 13A-6-61 and the person has one
19 or more prior convictions under Section 13A-6-61, the court
20 shall order restitution for an amount not less than ten
21 thousand dollars (\$10,000) for each conviction under Section
22 13A-6-61.

23 "(c) Nothing in this section shall limit or impair
24 the right of a person injured by a defendant's criminal
25 activities to sue or recover damages from the defendant in a
26 civil action. Evidence that the defendant has paid, or has
27 been ordered to pay, restitution pursuant to this section may

1 not be introduced in any civil action arising out of the facts
2 or events which were the basis for the restitution. However,
3 the court shall credit any restitution paid by the defendant
4 to a victim against any judgment in favor of the victim in the
5 civil action.

6 "§15-18-71.

7 "When a defendant is sentenced to a term of
8 imprisonment, the order of restitution shall be enforceable
9 during the period of imprisonment when the defendant has
10 ~~income~~ any asset or other income or any portion thereof to
11 which a defendant is or may be entitled. ~~The board of pardons~~
12 ~~and paroles will~~ Board of Pardons and Paroles shall be
13 notified of the amount of restitution by its parole officers
14 and when and if the defendant is paroled, it shall be made a
15 condition of ~~his~~ the parole to continue ~~his~~ the restitution
16 payments to the victim. If during the period of the
17 defendant's parole, he or she fails to make restitution as
18 ordered by the original court, it shall be grounds for
19 revocation of parole.

20 "§15-18-144.

21 "(a) Any provision of any law of this state to the
22 contrary notwithstanding and in addition to any other remedy
23 which is or may be hereafter provided by law for the
24 enforcement or collection of a restitution order, any decree,
25 judgment, or order requiring the payment of restitution may
26 include, upon motion of the victim, district attorney, the
27 Attorney General, or the court, an order requiring that any

1 asset or other income or any portion thereof to which a
2 defendant is or may be entitled be withheld or attached, and
3 such order may also require any person in real or constructive
4 possession, custody, or control thereof to pay over, deliver,
5 convey, transfer, or assign the same to the clerk of the court
6 for disbursement, transfer, or assignment to the victim in
7 accordance with the defendant's restitution obligation. If the
8 prison authority reasonably believes that the defendant's
9 outgoing mail contains any object or any item that has
10 monetary value, the object or item shall be seized and
11 transferred to the court of original jurisdiction. If the
12 court determines that the item or object seized has monetary
13 value, the item or object shall be transferred to the Board of
14 Adjustment for disbursement, transfer, or assignment to the
15 victim for satisfaction of the defendant's outstanding
16 restitution obligations. If the court determines that the item
17 or object seized does not have any monetary value, the court
18 shall return such to the prison to be promptly placed in the
19 U.S. mail.

20 "(b) The Alabama Department of Corrections may
21 promulgate reasonable rules to effectuate the intent of this
22 section."

23 Section 2. This act shall become effective on the
24 first day of the third month following its passage and
25 approval by the Governor, or its otherwise becoming law.